

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

TYLER S.,

Claimant,

vs.

REDWOOD COAST REGIONAL CENTER,

Service Agency.

OAH No. 2011080366

**DECISION**

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California, heard this matter on October 7, 2011, in Lakeport, California.

Claimant Tyler S. was represented by his parents.

Kathleen Kasmire, Director's Designee, represented Redwood Coast Regional Center.

The record was closed and matter was submitted for decision on October 7, 2011.

**ISSUE**

Did Redwood Coast Regional Center err by declining to continue funding behaviorist counseling service for claimant Tyler S.?

**FACTUAL FINDINGS**

1. Claimant Tyler S. (claimant) is a 17-year-old consumer of Redwood Coast Regional Center (service agency). He resides with his adoptive parents in Clearlake. Claimant is eligible for regional center services based upon a diagnosis of mild intellectual disability, namely mental retardation.

Also claimant has been found to be affected by severe Attention Deficit Hyperactivity Disorder (ADHD). The condition impacts him with impulse control malades, inattention and restlessness. Because of the diagnosis of ADHD, he has taken an array of medications over the years. But he continues to have periods of anxiety, excessive worry, temper tantrums, property destruction episodes and sleeping difficulties.

2. Claimant was born to a 20-year-old woman, who drank alcoholic beverages and used amphetamines during her pregnancy with claimant. (Also his birth mother is a consumer of service agency by reason of a history of epilepsy.) At birth claimant experienced mild jaundice and sustained “two possible seizures at about one month of age.” He exhibited slow weight gain. He began walking at 14 months, but he suffered frequent falls as a very young child. And claimant had a history of delays in expressive language and receptive language.

When claimant was approximately three years old, Lake County Child Protective Services removed him from his birth mother’s custody. Claimant then lived with two or three foster families. For a short time after the second or third foster home, his birth mother regained custody, but he was moved to another foster home. In July 1999, claimant went to live with his aunt, Ms. B.M.W., and her domestic partner, Mr. Ron S. In time, the couple became claimant’s adoptive parents.

Over the years, claimant has made frequent visits to the residence of his birth mother, who lives in a nearby town. He generally visits his birth mother every Friday night. Claimant does not have close contact with his birth father, who lives in Lower Lake. Claimant’s current, primary residence includes not only his parents, but also three young cousins who have ages of less than 10 years.

3. Claimant is enrolled at Lower Lake High School. Over the years he has received educational instruction in both mainstream classrooms as well as special education settings. During the current school year, however, claimant is part of a self-contained special education classroom. He is designated as being in the 11th grade.

Claimant reads at a very low level, which results in his reading scores being recorded at the first-grade level. He has great difficulty in understanding main ideas in reading passages. He cannot write a paragraph. Claimant can add and subtract two digit numbers; but, he has great difficulty with multiplication and division.

Claimant is viewed in school settings as being an outgoing student. But he needs cues in order to communicate effectively with peers. He is very verbose and strives for attention. During the current school year, which involves claimant’s placement in a self-contained classroom with other special education students, he is having a very good year. But there have been incidents at his school that pertains to his unruly conduct, including a recent incident when he took another student’s milk carton and “stomped” the container on a school floor.

Through school district administered psychological tests in February 2010, claimant scored at the 45th percentile in perceptual reasoning, at the 73rd percentile in verbal comprehension, and at 56th percentile in working memory. His full scale IQ was 71.

Because of his developmental disability, claimant is likely to receive a certificate of completion, rather than a high school graduation diploma in approximately 18 months. He plans to continue with a program called the Workability Job Club, which is administered at his high school, that will provide him with training until he reaches age 22 years.

4. In May 2009, service agency authorized funding for claimant to receive behaviorist services through Multiplicity Therapeutic Services by Awend Orme, M.A., Behavioral Analyst (Ms. Orme). The behaviorist's service was commenced for the specific purpose of aiding claimant to overcome his socially inappropriate interactions with young females, especially in the public school setting. An Individual Program Plan (IPP), dated August 27, 2008, had prescribed the parameters of the authorized behaviorist services, which was further refined in an IPP addendum dated March 18, 2009. Service agency authorized 10 hours per month of the behaviorist counseling services to aid claimant to resolve his sexually-oriented behavior.

The behaviorist services by Ms. Orme aided claimant to suppress his inappropriate sexual-oriented behaviors towards females. But in an IPP, dated July 20, 2010, the service agency noted that the behaviorist had altered the focus of therapy by addressing claimant's evolving aggressive behaviors, including excessive argumentation with his parents, destruction of property at his residence and elopement.

Over the past year of the work by Ms. Orme, the behaviorist's work evolved into the provision of consultative services to both claimant and his parents. The newest phase of Ms. Orme's work entailed "redirecting" claimant's unacceptable behaviors. The behaviorist has permitted the family to resort to telephonic contacts with her on those occasions when claimant engaged in excessive arguments with his parents, refused to perform household chores or otherwise caused extraordinary upheaval in the household.

In recent IPP meetings, service agency agreed to fund the behaviorist services until July 31, 2011, and that the behaviorist would commence on approximately May 1, 2011, an exit plan so as to ease claimant's loss of the relationship with Ms. Orme.

5. In July 2011, service agency determined that its provision of prospective funding for ongoing behaviorist counseling services for claimant would not be a cost-effective use of public funds because the goals and objectives of the initially prescribed therapy had been attained. On July 23, 2011, claimant's parents filed a fair hearing request objecting to service agency's determination to discontinue funding for the services provided claimant by Ms. Orme.

### *Claimant's Evidence*

6 Mr. Ron S., claimant's adoptive father, offered poignant and compelling testimonial evidence at the hearing of this matter. Mr. Ron S. is boundlessly pleased with the tremendous progress claimant has made through the behaviorist counseling by Ms. Orme. Moreover, claimant has developed a promising relationship with Ms. Orme, who has unique skills to not only gain claimant's agreement to abide by her instructions, but also to prompt claimant to exhibit socially acceptable conduct between sessions with the behavior consultant. But since the cessation of the funding for the services by Ms. Orme, claimant has displayed escalating disagreeable behavior, including violent temper tantrums, unwarranted hostile arguments, use of offensive language, and acts of property destruction within the family residence.

7. In addition to the observations made by Mr. Ron S., claimant's adoptive mother, Ms. B.M.W. has been troubled by the abrupt termination by service agency of the funding of the behaviorist services by Ms. Orme. Like Mr. Ron S., Ms. B.M.W. is greatly impressed with the progress made by claimant when he received counseling from Ms. Orme. But since April 2011 when the services ended, claimant had gotten progressively worse with displays of shocking conduct that moves towards more aggressive and destructive manifestations.

### *Service Agency's Evidence*

8. On behalf of service agency, Ms. Nola Montgomery offered credible and persuasive evidence at the hearing of this matter.

Ms. Montgomery is service agency's Consumer Service Manager. She has detailed insight regarding claimant's history of receiving behavior services as funded through regional center resources.

On April 20, 2011, Ms. Montgomery participated in an IPP meeting that was attended by claimant, his adoptive mother, a service agency coordinator, as well as the Consumer Service Manager. The meeting resulted in an understanding that the work of the behaviorist had been successful with regard to claimant overcoming his acts of "inappropriate behavior around females . . . to the point where [that conduct was] no longer an issue." The meeting noted that the behaviorist had refocused her work with claimant by addressing "target behaviors of arguing and swearing." The meeting concluded with an objective for the behaviorist to begin work on "an exit plan with [claimant] and his family by May 1, 2011." As of the April 2011 meeting, service agency agreed to fund 10 hours per month of behavior service for claimant to July 31, 2011.

Ms. Montgomery established that the behaviorist never formulated an exit plan that foresaw the cessation of the subject service. Rather a new course of consulting by Ms. Orme, which entailed the provision of mental health-like services, was proposed for claimant and his family.

9. Ms. Montgomery noted that other county offices had conferred with the service agency as recently as October 3 and October 7, 2011, regarding claimant receiving mental health services in Lake County.

Ms. Montgomery pointed to the six-year old report by Richard Goldwasser, M.D., regarding claimant's potential benefit from psychiatric treatment. In that report, dated January 15, 2005, Dr. Goldwasser set out that claimant "would be a good candidate for some psychotherapy around issues of anxiety, loss relationships, and the development of relaxation strategies. He should be eligible for services through school, Community Mental Health, and the California Victims of Crime Program." However, Ms. Montgomery observed that claimant has not been directed towards receiving mental health services through agencies other than through regional center funding.

#### *Ultimate Finding*

10. Service agency's determination to terminate funding for the provision of behavior consultant services for claimant to prospectively attend to claimant's mental health problems was not arbitrary or capricious. The weight of evidence shows that service agency has been reasonable and measured in its funding obligation to claimant under the directives of the Lanterman Act.

### LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act. (Welf. & Inst. Code, § 4500 et seq.) The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (Welf. & Inst. Code, § 4501.) Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (Welf. & Inst. Code, § 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (Welf. & Inst. Code, § 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, & 4648.)

2. Service agency has provided funding over more than two years of behaviorist consultation for claimant and his family to overcome specifically identified conduct pertaining to claimant's past behavior towards females. The behaviorist's work with claimant successfully aided claimant with the originally identified problem. It would not be a cost-effective use of limited financial resources to require service agency to continue funding a treatment plan by the behaviorist to address claimant's general behaviors, which manifest as temper tantrums, use of profane language and episodes of arguing, when such

behaviors may be grounded in a set of mental health ailments rather than a developmental disability. (Welf. & Inst. Code, §§ 4512, subd. (b), 4648, and 4651.)

Regardless of entitlement to services and support, a service agency is precluded from using its funds to provide the requisite services and support, if in so doing it would supplant the budget of any other agency, which has a legal responsibility to serve all members of the general public, and is receiving public funds for providing those services. (Welf. & Inst. Code, § 4648, subd. (a)(8).) The service agency is thus required to investigate, identify and pursue all possible sources of funding for its consumers for other generic resources, such as Medi-Cal, Medicare, and other agencies. (Welf. & Inst. Code, § 4652 and 4659, subd. (a)(1).) Here, claimant may be entitled to receive mental health treatment services from either the local school district or from county mental health agencies.

### ORDER

The appeal of Tyler S., which seeks continued authorization of the funding for behavior consultant services, is denied.

DATED: October 20, 2011

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PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

### NOTICE

**This is the final administrative decision in this matter. Each party is bound by this decision. Either party may seek judicial review of this decision in a court of competent jurisdiction within 90 days.**